STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Independent Telephone Association	)	
	)	Docket No. 00-0233
Petition for initiation of an investigation of the necessity of and the establishment of a Universal Service Support Fund in accordance with Section 13-301(d) of the Public Utilities Act	)	
Illinois Commerce Commission On its Own Motion	)	
	)	Docket No. 00-0335
Investigation into the necessity of and, if appropriate, the establishment of a Universal Support Fund pursuant to Section 13-301(d) of the Public Utilities Act	)	

REPLY BRIEF OF AMERITECH ILLINOIS
IN PHASE II OF THIS PROCEEDING

Illinois Bell Telephone Company ("Ameritech Illinois"), by one of its attorneys, submits this reply brief in response to the initial briefs submitted by other parties in Phase II of this Consolidated Proceeding.

I. The HAI cost model should not be used in this proceeding as a "keep whole" mechanism or to guarantee any individual company a particular rate of return.

In their initial briefs, several of the parties in this proceeding addressed what the proper role of the HAI cost model should be. The IITA has chosen to use the HAI cost model as a proxy for determining the economic cost of the supported services. Under Section 13-301(d), carriers seeking funding must demonstrate a need for a fund.

The parties are not in agreement as to the proper design of the HAI model, the appropriate inputs, etc. and have made suggestions on how it should be adjusted. Staff Brief at 34-36; AT&T Brief at 6-17; MCI WorldCom Brief at 6-7; and IITA Brief at 4-8.

Although Ameritech Illinois does not object to the use of the HAI model as a proxy, it takes no position as to the accuracy of the results. Ameritech Illinois supports limiting the use of the HAI model to a general acknowledgment that Section 13-301(d) permits the use of proxy cost models rather than company specific models. Furthermore, as AT&T observed in its initial brief, Section 13-301(d) permits the use of a cost proxy. It does not allow for its use as a revenue proxy. See AT&T Brief at 18. Neither the HAI model nor the Section 13-301(d) fund should be used as a "keep whole" mechanism.

With regard to the task of evaluating the use of the HAI cost model and also conducting a review of the company's needs or rate of return, Staff has completed a thorough review. This review is more appropriately conducted by Staff, in this context, than by a carrier's competitors.

II. The Commission Should Adopt Staff's Affordable Rates, But Should Shorten the Phase-In Period to Reduce Fund Size.

If the Commission chooses to order a Section 13-301(d) fund, Ameritech Illinois supports Staff's "affordable rates." Staff has recommended that any funding be predicated upon the carriers raising their rates over a five year period to an "affordable" rate level. Staff Brief at 27-31. Ameritech Illinois agrees with Staff's recommendation that the Commission should adopt an affordable rate of $24 per month for residence customers and $27 for business customers. Id. at 28. Staff proposes a five-year phase-in to the affordable rates. Ameritech Illinois supports the concept of a phase-in, but urges

the Commission to adopt a shorter phase-in period of four years, with the increase in the first year equal to two fifths of the difference between the rate level currently in effect and the $24 affordable rate level. Adopting Ameritech Illinois' proposal for a shorter phase-in would reduce the initial fund size proposed by Staff by approximately $2.1 million. Staff Brief, Appendix A, p.1 of 2.

In any event, the Commission should reject the position taken by the IITA, Leaf River, and Grafton that affordable rates are deemed to be a carrier's current rates. IITA Brief at 17; Leaf River Brief at 21; Grafton Brief at 33. See also AT&T Brief at 19 (defining affordable rates to be "the highest rate in effect during the last decade for each individual company"). The IITA expresses concern that the affordable rate will not include other charges such as the federal subscriber line charges, taxes, etc. IITA Brief at 16. However, this is not unique to the IITA companies. Neither do other carriers' basic rates include these additional items. The additional rates and charges are separate from the affordable rate for the supported services and should not be considered when setting the affordable rate.

The IITA states that if the Commission adopts a fund initially sized at $12,959,292 (which Ameritech Illinois does not agree to be appropriate), the surcharge on a customer's bill would be 8.3¢ per month on a $30 customer bill (7.8¢ per month, if the Commission adopts a $12M fund). IITA Brief at 18. The IITA apparently believes that it would be more appropriate not to raise current rates, but instead impose what it is characterizing as a modest charge on other end user customers of all other companies. What the IITA ignores is that its proposal to set "affordable" rates at current levels continues existing subsidies. The end user customer paying the additional 7.8¢ or 8.3¢,

will be subsidizing smaller companies' end user customers. Despite the fact that the difference in the subsidy flowing from an individual customer might seem small, the total amount of the subsidy remains large. Furthermore, one purpose of this proceeding is to address and eliminate unnecessary subsidies, not perpetuate them. The Commission should not permit such subsidies to continue.

III. It is appropriate for the Commission To Use a Forward-Looking Cost Model as a Proxy in this Proceeding.

Several of the small local exchange companies participating in this proceeding object to the use of the HAI cost model. They claim that: 1) Section 13-301(d) does not permit the use of a forward-looking cost model; and 2) the use of a forward-looking cost model is inconsistent with Section 254 of the Telecommunications Act of 1996 (TA 96). See Initial Brief of Grafton Telephone Company, Gridley Telephone Company, Harrisonville Telephone Company, Home Telephone Company, Metamora Telephone Company and Tonica Telephone Company (referred to collectively as "Grafton") at 44; Initial Brief of Leaf River Telephone Company, Alhambra-Grantfork Telephone Company, The Crossville Telephone Company, Glasford Telephone Company; Montrose Mutual Telephone Company, New Windsor Telephone Company, Oneida Telephone Exchange, Viola Home Telephone Company and Woodhull Community Telephone Company (referred to collectively as "Leaf River") at 4-8. In general, these carriers argue that because Section 13-301(d) does not explicitly state that "economic cost" means long run service incremental costs, the proper legislative interpretation is that the economic cost refers to historical cost. Nothing in Section 13-301(d), however, appears

to prohibit the Commission from using a forward-looking cost model as a proxy for the limited purposes for which it is being used in this proceeding.

The carriers also argue that basing the cost of providing the supported services on long run service incremental costs or a forward-looking cost study is inconsistent with Section 254 of TA96. Grafton Brief at 49-50; Leaf River Brief at 9-11. The companies' argument is predicated on the May 23, 2001 Order of the FCC In the matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 and Multi Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Carriers and Interexchange Carriers, CC Docket No. 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking.

The companies rely on paragraph 177 of the Order which states in part:

> …Although we conclude that the Rural Task Force's analysis has not demonstrated that a forward-mechanism could never appropriately be used to estimate rural costs, we do not have sufficient information to do so at this time. Even those commenters who urge the Commission to move to forward-looking cost for rural carriers recognize that the Commission would need additional time to develop suitable rural input values. Because the Commission has not developed rural inputs and it is not possible to determine forward-looking costs for rural carriers at this time, we find that rural carriers should continue to receive support based upon their embedded cost while the five-year plan adopted in this Order is in place.

The companies further argue that this is inconsistent with the requirements of Section 254(f) of TA-96 which states that a "state may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service". Section 254(f) further states that a state may adopt regulations "to preserve and advance universal service in that state only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms".

Nothing in the FCC's Order suggests that merely because the FCC declined to adopt a forward-looking cost model for rural carriers in that proceeding, that this Commission is preempted from using a forward-looking cost model as a proxy for purposes of the Section 13-301(d) fund for the limited purposes advocated by Ameritech Illinois and some of the other parties.

In any event, it is Ameritech Illinois' position that the size of the fund not be predicated on the HAI model and that the results of the HAI model be used only as an indication that small companies, in general, have higher costs in total. The HAI results should not be used for any other purpose than this and should not be used on an individual company basis.

IV. The Testimony on Historical Embedded Costs was Properly Excluded from This Proceeding.

Leaf River and Grafton claim that their testimony on historical embedded costs was improperly stricken and that the Commission improperly denied their petition for interlocutory review of the Hearing Examiner's Order striking the testimony. Their arguments are without merit.

First, as described by AT&T, MCI WorldCom, Verizon and Ameritech Illinois' Joint Motion, Leaf River and Grafton improperly submitted rebuttal testimony proposing the use of an embedded cost study to support their request for funding. The Hearing Examiner in this proceeding set an agreed upon procedural schedule on March 22, 2001. Every carrier seeking funding had the opportunity to present cost model testimony on March 23, 2001. The IITA submitted testimony. Instead, Leaf River and Grafton filed as part of their "rebuttal" testimony, testimony that included the use of an embedded cost

study and presented a request for intrastate universal service funding support. The Hearing Examiner properly struck that testimony, because the filing of such embedded cost testimony was not in accord with the established procedural schedule and did not afford the parties who had adhered to the procedural schedule an opportunity to respond to the embedded costs proposals.

Grafton now argues that the Commission's denial of the Petition for Interlocutory Review "ignores a fundamental problem with this proceeding and makes the problem worse". Grafton Brief at 59. Grafton argues: 1) that this is not a "contested case" within the Illinois Administrative Procedures Act; 2) that Grafton, etc. were not each made a "party"; and 3) that the "notice did not contain a statement of the consequences of a failure to respond, such as the denial of the right to present evidence". Grafton Brief at 59. Leaf River also argues that striking the testimony violated its rights of due process and equal protection. Leaf River Brief at 27-33.

Leaf River's and Grafton's arguments should be rejected. They were clearly on notice that this procedure was likely to address the method of funding a Section 13-301(d) fund. When the Commission initiated its investigation in Docket No. 00-0335, it sent a notice to all certificated local exchange carriers, which includes Leaf River and Grafton. The caption alone put Leaf River and Grafton on notice—"the investigation into the necessity of, and, if appropriate, the establishment of an universal service support fund pursuant to Section 13-301(d)". Thus, Grafton's claim (p. 59) that the notice was defective because it did not contain a statement of the consequences of a failure to respond should be rejected. Moreover, the IITA, of which these companies are members, had filed a petition seeking to establish a Section 13-301(d) fund.

Second, Leaf River and Grafton, have been the long-term beneficiaries of the DEM Weighting and High Cost funds. They continued to be the beneficiaries when the Commission remanded to Docket No. 98-0679 the issue of whether to grant a continuance of the DEM Weighting Fund until the conclusion of this proceeding or September 30, 2001, whichever is earlier. Grafton makes the unsupported statement in their initial brief that "[t]he petitioner in Docket No. 00-0233, IITA, had no independent statutory or contractual authority to represent the interests of the individual small telephone companies in a contested case where the individual legal rights, duties and privileges of the small companies is at stake." Grafton Brief at 59. Grafton has never challenged the IITA's authority to negotiate the DEM Weighting Fund stipulations. Only when it apparently appeared that they were going to lose or experience reductions in funding did Leaf River and Grafton seek to interpose their own theory of the type of economic costs and need that must be demonstrated to receive funding under Section 13-301(d).

Finally, as discussed above, Leaf River and Grafton were clearly on notice that the demonstration of the economic costs of providing the supported services would be an issue in this proceeding. Given that they were on notice, they are bound by the rule that "[e]xcept for good cause shown, an intervenor shall accept the status of the record as the same exists at the time of the beginning of that person's intervention." 83 Ill. Adm. Code 200.200(e). The decision when to file to intervene was Leaf River's and Grafton's. Their testimony was properly stricken as improper rebuttal, and the Commission properly denied the petition for interlocutory review.

V. If the Commission Determines to Establishes a Section 13-301(d) Fund, the Supported Services Should be Limited to a Primary Residence Line and Single Line Business.

The parties generally are in agreement that the list of supported services should be limited to the FCC's list of supported services. One of the FCC's supported elements is "voice grade access to the network." There is some disagreement over whether voice grade access to the network should include all access lines or be limited to single lines. MCI's position is that the Commission should specifically find "that any state universal service fund should support services only over primary residential access lines, including some amount of local usage provided over those lines". MCI Brief at 5. AT&T takes the position that it would not object to the inclusion of all access lines so long as the changes recommended by its witness, Dr. Clarke, are made to the inputs to the HAI cost model. Staff also recommends that supported services include all access lines. Staff Brief at 25.

Ameritech Illinois continues to recommend that support be limited to a primary residence line and a single business line. Any high cost subsidization should be limited to ensuring that all customers have access to basic services. See Am. Ill. Brief at 6-7; Am. Ill. Ex. 2.0 at 5. If high cost funding is permitted for additional discretionary services (e.g. second residential lines), other carrier's customers and customers in other areas of the state would end up subsidizing the discretionary services. An inner city customer who can barely afford basic service should not be required to subsidize second lines and other discretionary services for customers in rural areas who are much better off financially.

The Commission should not extend universal funding support to all access lines, because there are future competitive implications as well. For example, by permitting

funding for all business lines, the Section 13-301(d) fund could have the, perhaps unintended, consequence of encouraging competition for those business services only. In that event, competitors would be subsidized by end users in other areas of the state. To achieve competitive neutrality and to avoid inappropriate subsidies by other consumers and end users, only basic voice grade access to the network, which should be limited to a primary residence line and a single business line, should be eligible for funding.

VI. The Commission should consider whether to include wireless carriers as funding carriers in any Section 13-301(d) fund.

Section 13-301(d) provides that all costs of the fund be recovered from all local exchange and interexchange telecommunication carriers certificated in Illinois on a competitively neutral and nondiscriminatory basis. In order for the fund to be competitively neutral, it should also be technologically neutral. Thus the Commission should consider whether wireless carriers should also be subject to the intrastate universal service funding requirement.

The parties are not in accord as to whether wireless carriers should be included or excluded as funding carriers. For example, Staff takes the position that Section 13-301(d) applies only to wireline carriers because it provides that "all costs of the fund be recovered from all local exchange and interexchange carriers certificated in Illinois." Staff Brief at 18. AT&T also takes the position that wireless carriers should be excluded. AT&T Brief at 26. MCI, on the other hand, agrees that wireless carriers should be included as funding carriers stating that "competitive neutrality requires that funding obligations be assessed to all providers, including wireless carriers" although it is not

clear to MCI WorldCom whether their inclusion is permitted under Section 13-301(d). MCI Brief at 12.

As discussed in Ameritech Illinois' Initial Brief, wireless carriers are subject to providing interstate universal service support pursuant to Section 254 (TA 96). Any regulations adopted by the state must not be inconsistent with the FCC's rules. An automatic exclusion of wireless carriers from the Illinois intrastate fund may be inconsistent with Section 254(f) of the TA-96. In addition, excluding wireless carriers fails to recognize that wireless services are, for many end users, a substitute for wireline services. Accordingly, the Commission should determine that wireless carriers should be included. However, since it is unclear whether wireless carriers were noticed of this proceeding, the Commission may wish to defer inclusion of wireless carriers in the funding assessments until a secondary phase of this proceeding can be initiated to deal with this and also any other implementation issues. This secondary phase should be initiated immediately upon conclusion of this instant proceeding.

VII. Any Section 13-301(d) fund should be based on intrastate retail revenues, but should not be net of carrier-to-carrier payments.

AT&T continues to argue that any funding should be based on total intrastate revenues, net of any intercarrier payments. See AT&T Brief at 23. As discussed in Ameritech Illinois' Initial Brief (p. 12-13). Ameritech Illinois agrees that the intrastate funding should be based on intrastate retail revenues, but disagrees that it should be net of any intercarrier payments.

Staff also rejects AT& T's position citing several reasons. These reasons include that: 1) it would shift a greater burden of funding to facilities based carriers; 2) any

double counting problem has already been fixed by using intrastate retail revenues; and 3) and it would place additional administrative burdens on the fund because it would be necessary to keep track of intercarrier payments. Staff Initial Brief at 18-21. Ameritech Illinois agrees with Staff. If the Commission chooses to adopt a Section 13-301(d) fund, it should be based on intrastate retail revenues, but it should not be net of intercarrier payments.

VIII. The end user surcharge should be recovered through a flat percentage surcharge.

Ameritech Illinois supports recovery of amounts paid into the fund through a flat percentage surcharge. For any Section 13-301(d) fund to be competitively neutral, all carriers must be treated equally relative to the manner in which they are permitted to recover the funds contributed to the universal service fund.

AT&T takes the position that, for purposes of establishing an end user surcharge, it would be appropriate for the Commission to require telecommunications carriers to assess the charge to its retail customers as either a flat charge or as a uniform percentage of current intrastate end user revenues at the carriers' option. AT&T Brief at 26. Ameritech Illinois believes that the Commission should only permit one method of recovering the surcharge. In addition to being the most competitively neutral, requiring all carriers to recover in the same manner has the administrative convenience that once the fund administrator calculates the percentage surcharge, all carriers would apply the same surcharge and would simply remit the amount collected to the fund administrator. This eliminates the need to calculate each carrier's assessment separately or to just leave it to the carrier to determine how to spread its assessment among its own customers. Furthermore, it avoids gamesmanship on the part of carriers who might perhaps pass on

disproportionate amounts of refund recovery to certain portions of their customer base, thereby gaining a competitive advantage over other carriers.

Section 13-301(a) provides that the Commission "shall not approve or permit the imposition of any surcharge or other fee designed to subsidize or provide a waiver of the subscriber line charge." MCI takes the position that if the Commission chooses to establish a Section 13-301(d) fund, such fund "is not per se designed to subsidize the subscriber line charge." MCI Brief at 13. Accordingly, MCI urges the Commission to permit funding carriers to recover their costs from their end users through a uniform surcharge. Ameritech Illinois agrees.

Ameritech Illinois also agrees with AT&T that Section 13-301(a) has no effect on the Commission's authority to establish a state universal fund for high cost exchanges. See AT&T Brief at 35-36. Section 13-301(a) permits the Commission to establish a Universal Telephone Service Assistance for low income residential customers.

IX. The Commission Should Require that Carriers Contribute to the Fund Based on Actual Revenues, not Historical Revenues.

Several of the parties in this proceeding have discussed the issue of implementation. The current proposal is that if the Commission determines to establish a Section 13-301(d) fund, it would be funded based on intrastate retail revenues. The important issue before the Commission is how best to accurately reflect intrastate retail revenues to determine the proper level of contribution. In a competitive environment, carriers' intrastate retail revenues as a percentage of the total market may not remain the same. If a carrier is losing market share, for example, its retail revenues may be likely to decrease. For that reason, it is important that the implementation of the fund take into

account the fact that a carrier's retail revenues may vary and that to assess funding based on historical revenues would be unfair to some carriers and a windfall to others.

The IITA has raised the question of implementation of any Section 13-301(d) fund in its initial brief and its hope that there may be agreed-to administrative procedures addressing fund administration and implementation issues. IITA Brief at 22. One issue which must be decided is how to calculate fund assessments. One proposal might be to calculate fund assessments by including assessments for individual companies based on an individual company's prior year intrastate retail telecommunications revenues. While Ameritech Illinois would agree that the prior year intrastate retail telecommunications revenues of contributing carriers are useful in calculating the industry-wide flat percentage surcharge, it would not agree that this percentage should be applied against an individual company's revenues to calculate an individual company assessment. This adds an unnecessary step in administration of the fund and diminishes the competitive neutrality of the flat percentage surcharge methodology.

Staff uses an example in its Initial Brief, (p. 22), to argue against MCI's recommendation for using a flat per-line surcharge versus the flat percentage surcharge being supported by most other parties. A similar example can be used to demonstrate why individual company assessments undermine the competitive neutrality of the flat percentage surcharge. For purposes of demonstration, one should assume that contributions to the IUSF are based on intrastate retail telecommunications revenues and that Funding Carrier A and Funding Carrier B both have 100 retail customers who cumulatively generate $10,000 in annual intrastate retail revenue. One should further assume that the size of the IUSF dictates that 1% of total intrastate retail revenues must

be contributed by each carrier, making the annual assessment $100 each for Funding Carrier A and Funding Carrier B. If each funding carrier ends the year with the same number of customers they had when their assessment was calculated, they collect $1 from each customer for their respective $100 assessments. If one further assumes, however, that immediately after these assessments have been calculated, fifteen customers of Funding Carrier A decide to disconnect service with Funding Carrier A and subscribe to service with Funding Carrier B, then under this scenario, Funding Carrier A will only recover $85 of the $100 they are obligated to pay into the fund. At the same time, Funding Carrier B would recover $115, a $15 windfall, due to their increased market share. While the example is a simple one, this scenario is very real in today's competitive marketplace. If the flat percentage surcharge is simply applied against the end user bill and the revenues collected by the service provider are turned over to the fund administrator, the identity of an end user's service provider becomes a moot point. Applying the flat percentage surcharge in this manner, without calculating individual company assessments, eliminates the issue of under or over-recovery and maintains the competitive neutrality of this method.

Ameritech Illinois recognizes that, should the commission choose to establish a state universal service fund pursuant to Section 13-301(d), there will be a lag between the effective date of the fund, October 1, 2001, and when funding carriers would be able to initiate recovery from their end users. For this reason alone, Ameritech Illinois agrees that individual company assessments may be appropriate at the rollout of any such fund. If the Commission determines to establish a Section 13-301(d) fund, the order in this docket should determine a date certain (no longer that one year after fund

implementation) at which time the fund would move from individual company assessments to a simple industry-wide assessment. This guarantees that individual companies would neither gain nor lose as a result of the fund, but would simply pass through any surcharge revenues collected from their end users to the fund administrator. It also lessens the administrative burden of calculating the individual company assessments. To the extent that there are overages or shortfalls to the fund, these would be managed by the fund administrator and could be accounted for in the subsequent year's assessment.

Ameritech Illinois agrees with Staff that a quarterly revenue report to be filed with Staff at the same time quarterly reports are filed with the FCC would reduce duplicative work by funding carriers and help to minimize the administrative burden. Staff Brief at 23. These quarterly reports could also serve as checkpoints to ensure that the fund is on target for the year. The order in this docket should consider a mechanism, whereby adjustments to the surcharge could be made on a more frequent basis than annually, should a significant shortfall or overage to the fund be identified by the administrator.

X. The Commission should not order a true-up among carriers that have been providing funding for the current DEM Weighting Fund.

One of the issues before the Commission in Phase II of this proceeding is whether there should be a "true-up" among the carriers who have funded the DEM Weighting Fund. Ameritech Illinois and Verizon take the position that there should not be a true-up and AT&T and MCI WorldCom take the position that there should be. See Ameritech Illinois Brief at 14-18; Verizon Brief at 10-13; AT&T Brief at 28-35; MCI Brief at 14-17.

The DEM Weighting Fund and the High Cost Fund were both established to replace access charge revenues that had been reduced as a result of the practice of mirroring interstate access charges. Because these were access charge replacement funds, the funding of the DEM Weighting Fund and the High Cost Fund were based on the proportionate amount of access minutes each of the funding toll carriers (IXCs and LECs) had with the small LECs. The DEM Weighting Fund stipulation provided that if a different funding mechanism were ordered at the time a permanent High Cost Fund was established, there would be a true-up mechanism. The true-up would be the difference between what a carrier had paid on the basis of the access charge methodology and what the carrier would have paid under the funding methodology ordered for the permanent High Cost Fund. In addition, there was a fifty per-cent cap in the stipulation which meant that no carrier would pay more than half of what the true-up amount would have been.

AT&T and MCI WorldCom both minimize the role that incumbents LECs like Ameritech Illinois have paid in funding the DEM Weighting and High Cost fund. For example, in arguing that a new Section 13-301(d) fund should be funded through intrastate retail revenues, AT&T argues that basing contributions upon toll usage would not be competitively neutral because "it advantages a provider that provides little or no intrastate toll service, such as those ILECs which are parties to the Commission-approved stipulated agreement". AT&T Brief at 34. Similarly, MCI WorldCom argues that " Ameritech and Verizon have paid little into the DEM Weighting Fund because of the very biased manner in which the DEM funds have been financed". MCI Brief at 16. AT&T and MCI WorldCom are wrong. Ameritech Illinois is a substantial contributor to the fund because of the intraLATA toll services that it provides. Moreover, the entire

rationale of the DEM Weighting and High Cost Funds was to replace the small LECs' reduction in access charge revenues. It was considered appropriate under those circumstances that toll carriers, including ILECs like Ameritech Illinois that provide toll services, should pay into the fund.

The Commission should also reject MCI WorldCom's argument that there should be a true-up because it is necessary so that "carriers that have overpaid based on the existing, biased formula … receive refunds from carriers who have underpaid … ." MCI Brief at 16. MCI WorldCom conveniently overlooks the fact that it is not carriers who have overpaid. If anyone has overpaid, it has been toll customers. The carriers were kept whole as a result of the reduction of the access charges. Under MCI WorldCom's theory, if there is a true-up, those true-up amounts should be paid directly to MCI WorldCom's toll customers, not MCI WorldCom.

AT&T makes the point that parties to the earlier stipulated agreement expressly agreed that the permanent funding methodology would be consistent with TA 96 and would be subject to a true-up. AT&T Brief at 34-35. Paragraph 8 of the Stipulation states:

> The Parties agree that all issues related to the need for and the establishment of a Universal Service Support Fund under the applicable statutory criteria will be available for examination in Phase 2 of this docket. Neither the creation of an Interim Fund nor the funding methodology determined to be appropriate for the Interim Fund should be given weight as a precedent in connection with the Phase 2 investigation.

The establishment of a universal service fund, if any, that meets the requirements of Section 13-301(d) and Section 254 of TA 96 involves more complex issues and is now being explored in Phase II. The Commission extended the DEM Weighting fund, an access charge replacement fund. The fund being established in Phase II must meet the

statutory criteria of Section 13-301(d) and be consistent with TA 96. The Commission's finding that the earlier funds did not meet the criteria of Section 13-301(d) sets the new fund apart. There is no need for a true-up because the Commission determined the "permanent funding methodology" for the non-13-301(d) funds, i.e., a proportionate share based on the toll carrier's minutes of use. Accordingly, the Commission should not order a true-up. If the Commission does order a true-up, it should order the true-ups to go directly to the end user toll customers of each carrier as an explicit one time credit, not simply as a payment to a carrier to do with as it pleases.

Respectfully submitted,
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